

# MADISON COUNTY PLANNING

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## Streamside Protection Steering Committee Meeting Summary

Tuesday June 10, 2008

First Madison Valley Bank, Basement Meeting Room, Ennis, MT

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### **Attendance:**

Planning Staff: Charity Fechter (planning director), Jim Jarvis (staff planner), Karen Filipovich (facilitator)

Steering Committee: Kelly Galloup, Richard Lessner, Donna Jones, Gayle Schabarker, Pat Clancy, Chris Murphy, Amy Robinson, Jeff Laszlo, John East (Alternate)

Absent: Bill Mercer

### Audience (46):

Pat Eller (Presenter, Morrison-Maierle)  
Justin Houser (Presenter, Morrison-Maierle)  
Tom and Sandy Strawser  
Lorraine Snipper  
Caire East  
Sam Johnson  
Dick Vanderheyden  
Dale Fetz  
Miriam & Dick Rohrbaugh  
Diane & Larry Krokes  
Dave Bricker  
Virginia Byaum  
Don Bowen  
Dennis and Susan Hourany  
Karen Shores  
Ozzie and Loetta Nevin  
Bernie and Ardie Fisher  
Ed and Shirley Fisher

Van Bryan  
Bob Ilse  
Tricia and Laird Stabler  
Karen Giorgianni  
Bonnie Workman  
Cindy Younkin  
Arcyllee Shaw  
Janice Carmody  
Catherine Ellerton  
Jim Ellerton  
Ford and Snaque Rollo  
Elizabeth Mallin  
Jaime MacNaughton  
Dennis Carlson  
Bill Beam  
Tom & Mary Griffin  
Pat Goggins  
Stephanie & Dennis Reilly

### **1. Greetings and welcome - Charity Fechter, County Planning Director**

The meeting was called to order at 6:30 p.m. by Charity Fechter. Charity introduced Karen Filipovich, the new facilitator retained by the County.

### **2. Introductions**

Those in attendance introduced themselves, beginning with the steering committee.

### **3. Receive May 6, 2008 meeting summary**

C. Fechter directed the committee's attention to a summary of the last meeting and copies of public comment received by the Planning Office.

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#### **4. Justin Houser and Pat Eller, Morrison-Maierle Engineering**

Justin Houser gave an overview of federal and state water quality regulations and Best Management Practices (BMP) used to control erosion, stabilize stream banks, and minimize surface water impairment from construction-related contaminants. Construction activities that disturb more than one acre of land require creation of a stormwater management plan for Montana Department of Environmental Quality review. A typical residential development does not disturb enough land to require regulatory review. Justin and Pat Eller also gave a brief overview of how septic systems are designed and operated and potential environmental concerns. In general septic systems must be located at least 100 feet away from surface water bodies. A properly designed, permitted, constructed, and maintained septic system provides reasonable assurance that a nearby river will not be contaminated by wastewater. In response to a question, they stated a DEQ permit would not be required for an incinerating toilet as it would not discharge into the waters of the state.

#### **5. Review Status of Language Agreed Upon**

Karen Filipovich asked for confirmation that the committee was willing to meet for more than the four meetings originally anticipated. General agreement that additional meetings were needed was expressed and supported.

Karen directed the committee's attention to a handout (dated June 10, 2008) outlining proposed amended language based on the May 6, 2008 committee meeting.

#### Nonconformances

Regarding the topic of nonconformity (Item A, Page 1), the steering committee agreed that all uses of the term shall be removed from the proposed ordinance and that Section 10 – Nonconformity, shall be removed in its entirety. General consensus was expressed.

Donna Jones asked whether another word would be used in place of nonconformity. Charity responded no replacement was necessary; the related sections of the ordinance have been removed. Donna asked that these handouts and a revised version of the ordinance be prepared and posted on the county website, depicting these changes. The address for the county website was displayed for the public.

#### Pre-existing Buildings

In response to Amy Robinson's inquiry as to how pre-existing buildings will be treated by the proposed ordinance, Charity directed the committee to Item B, Page 1 of the handout – Pre-existing Buildings.

The proposed definition of pre-existing building was, "a structure with an established footprint (foundation) and a completed roof located in the setback area and constructed before (adoption date of the ordinance)."

The use of the terms "footprint" and "foundation" were felt to be too vague. The committee expressed concern that requiring a foundation and a roof on the structure was too severe a requirement for pre-existence. Richard Lessner, proposed the definition of a pre-existing building

be changed to read, “a structure, located within the setback area, and constructed before (adoption date of the ordinance)”.

The question was raised by the audience whether trailers would qualify as a pre-existing building. The Committee re-affirmed that trailers are considered pre-existing buildings.

Once there was agreement on how pre-existing buildings were defined, the Committee discussed the proposed additional language to describe how pre-existing buildings are to be treated. The proposed language read as follows:

A pre-existing building may rebuild and/or expand subject to the following:

- a. New construction shall not be any closer to a regulated stream than the pre-existing building.
- b. A pre-existing building that has been destroyed may be rebuilt and expanded at the same location. If the building is expanded, it shall not be located any closer to a regulated stream than the pre-existing building.

The purpose behind the proposed language was discussed. The Committee’s intent is to allow existing buildings to remain where they are, and to expand, rebuild, or add buildings, provided they are not any closer to the stream than the original building. The need for explicitly addressing these circumstances was to ensure the Committee’s intent would not be obscured by alternate interpretations occurring over time.

The steering committee agreed it could live with this language:

Definition of “pre-existing building” - a structure, located within the setback area, and constructed before (adoption date of the ordinance).

Additional language - A pre-existing building may rebuild and/or expand subject to the following:

- a. New construction shall not be any closer to a regulated stream than the pre-existing building.
- b. A pre-existing building that has been destroyed may be rebuilt and expanded at the same location. If the building is expanded, it shall not be located any closer to a regulated stream than the pre-existing building.

The Committee affirmed that the setback associated with the original, existing building would determine the setback for all new construction.

A member of the audience asked, “what are you [the committee] trying to accomplish with this thing [ordinance]” and further suggested, “if you can articulate what you’re trying to accomplish it might be a little easier to figure out what the standards are”, and posed the question “what evil are we trying to address?” Various committee members attempted to respond to the question and ultimately agreed, the purpose statement (question # 1) will need to be revisited. Another member of the audience, further questioned “why a 500 foot setback [on the Madison] is even being considered, what science is there to support the proposed setback?”

Jeff Laszlo, reminded the audience that many of these issues were discussed at previous meetings. Karen Filipovich suggested the purpose statements within the committee's charter and the proposed ordinance will need to be reviewed at some point. The further discussion of criteria how it relates to recommendation and purpose was tabled for a future meeting and parked for further consideration.

J. Jarvis introduced the concept of whether a site inspection, or some form of compliance review, was needed to document the location of a pre-existing building, and establish the site-specific setback. Suggested Additional Language was:

Prior to altering a pre-existing building, the existing setback must be documented and confirmed by the Planning Office.

The discussion centered around whether it should be the County or the property owner who researched the existing building and setback. Various methods and expectations were described, including the use of GoogleEarth photos, surveys, and records held by the property owners.

The committee agreed to table this item for future consideration.
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### Narrow Lots

Jim and Charity presented an overview how to address setbacks on lots that are narrower than the proposed setback. To avoid an elaborate variance process, the following options for establishing a “custom” narrow lot setback were presented to the Committee:

In the event a proposed setback restriction exceeds the depth of an existing lot, thereby rendering the lot potentially unbuildable, a site-specific minimum building setback shall be established equivalent to the lesser of the following three options:

- a. Average (precedent): Average setback of existing buildings within ¼ mile (immediate vicinity) of the proposed building site
- b. Half-the-maximum depth: ½ the maximum depth of the property as measured from the ordinary high water mark
- c. Minimum: 100 foot minimum

Furthermore, the ordinance would ensure that, under no circumstance will a property owner be deprived of all rights to develop a site without just compensation. A building setback will be reduced on a case-by-case basis where strict compliance with the terms of this ordinance would preclude reasonable economic use of the property.

Examples from Truckee, California, and Marion, Oregon were briefly described.

## **6. Schedule next meeting and set agenda**

The items to be addressed at the next meeting were discussed, as follows:

- a. Staff will post “agreed upon” items on the county website.
- b. Staff will continue to research methods for establishing setbacks for narrow lots, such as averaging, and the types of rivers where each method is applied.

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- c. Discuss Question #8: Should setbacks apply to more than just buildings (roads, excavation, grading, landscaping)?
- d. Discuss Question #9: Should protection go beyond setbacks?
  - i. Maintain existing, native streamside vegetation from removal?
  - ii. Restricted building in floodplain areas?

**The next committee meeting is scheduled for Tuesday, July 15, 2008 at 6:30 p.m. in Ennis.**

## **7. Adjournment**

Meeting adjourned: 8:50 p.m.